CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 1165/1997

New Delhi this the 7th day of November, 1997.

HON'BLE DR. JOSE P. VERGHESE, VICE CHAIRMAN (J)

HON'BLE SHRI N. SAHU, MEMBER (A)

Ex. Inspector Rohtas Singh Tanwar,
D-I/886, S/O Shri Dalbir Singh Tanwar,
R/O B-2, Type-IV, New Police Lines,
Kingsway Camp,
Delhi-110009. ... Applicant

(By Shri Shankar Raju, Advocate)

-Versus-

1. Union of India through
Secretary, Ministry of Home Affairs,
North Block,
New Delhi.

2. Commissioner of Police,
Police Headquarters,
I.P. Estate, New Delhi.

3. Addl. Commissioner of Police
(Northern Range),
Police Headquarters,
I.P. Estate,
New Delhi.

4. Dy. Commissioner of Police,
HQ-III, P.H.Q., MSO Building,
I.P. Estate,
New Delhi-110002. ... Respondents

(By Shri Rajinder Pandita, Advocate)

O R D E R

Dr. Jose P. Verghese, VC(J)-

The petitioner in this case was dismissed from service under proviso (2) (b) to Article 311 of the Constitution of India, without holding any enquiry, on the allegation that the petitioner was trapped and arrested in FIR No. RC-59-A/96 dated 18.7.1996 under Section 7 of the Prevention of Corruption Act, 1988 by the CBI for allegedly demanding and accepting a bribe

of Rs.20,000 from one Shri Mohinder Singh Yadav when the petitioner was posted as SHO Rohini. It was alleged that the said bribe money was received from Mohinder Singh Yadav for getting his brother who was involved in a case registered against him under Sections 365, 376, 377, 342, 506 and 34 IPC, to be released on bail. The disciplinary authority based on his general knowledge that in the circumstances the complainant and other witnesses would be put under constant fear and threat and it is extremely difficult for the complainant and the witnesses to muster enough courage and based on these assumptions, no effort was made to call the complainant or witnesses to give evidence against the petitioner, rather he proceeded to dismiss the petitioner without any enquiry under provisions narrated above.

2. Aggrieved by the said order dated 2.8.1996, the petitioner filed an appeal and the same was rejected by an order dated 9.5.1997. The petitioner has filed this O.A. against both these orders, namely, the impugned order dated 7.8.1996 as well as the appellate order dated 9.5.1997. After notice, the respondents have filed their reply and stated that the impugned order as well as the appellate order have been passed in accordance with law and the same cannot be faulted on any ground. The learned counsel for the petitioner submitted that the right of the petitioner under Article 311 is a constitutional right and the power given to the respondents under proviso (2) (b) has not been validly exercised. The respondents have

passed the impugned order in a mechanical manner without application of mind and based on no material. It was stated that the reason said to have been stated on the face of the order does not indicate that the respondents have made any effort to summon the complainant or the witnesses and no notices had been issued to them and without doing so, the conclusion arrived at by the respondents that the complainant and other witnesses would be put under copnstant threat to their person by the petitioner, is based on conjucture and is a presumption without having any basis of any available material. It was also stated that the conclusion arrived at by the disciplinary authority was not on the basis of any material available in the present case, rather the same was based on the general knowledge of the disciplinary authority. It was further stated that the order passed is one without application of mind, a stereo type order and the reason stated on the face of the order does not have any bearing with the facts of the case and as such they are vague and irrelevant. The experience of the disciplinary authority in other similar cases is totally extraneous and irrelevant as far as the present case is concerned. It was also argued that this cannot be a case where the complainant or other witnesses are not available since the petitioner is said to have been subjected to a trap case and to state that the complainant, the witnesses and the CBI included, cannot be said to be under constant fear and threat from the petitioner and the same is totally unfounded.

3. We have perused the records and heard the arguments of both the parties and we find that the reason stated on the fact of the impugned order dated 2.8.1996 is not based on any material pertaining to the present case, rather it is based on the assumption that the complainant and the witnesses in similar cases would not be forthcoming and would be under constant fear or threat to their person by the delinquent Inspector. The reason stated in the impugned order is reproduced below :-

> "The facts and circumstances of the case are such that it would not be reasonably practicable to hold a departmental enquiry against Inspr. Rohtash Singh, since it is certain that during the entire process of departmental proceedings, the complainant and other witnesses would be put under constant fear of threat to their person by the delinquent Inspector and in such a situation conducting of departmental proceedings would become virtually non-practicable. Instances are not uncommon where people have not dared to depose even against ordinary criminals, whereas in the instant case, the deposition of the complainant and witnesses would be against a police officer of Inspector rank, who has greater capability of terrorising these complainants/witnesses.
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> It would be extremely difficult for the complainant and witnesses to muster enough courage against the delinquent Inspector due to fear of severe reprisal from him and as such, keeping in view the above reasons, I feel totally satisfied that it would not be reasonably practicable to hold a departmental enquiry against the delinquent Inspr. Rohtash Singh, whose act has clearly indicated criminal propensity on his part."

4. As stated above, the reason stated on the face of the order clearly shows that the decision

arrived at, namely, not to hold enquiry, is not based on any material relevant to the case, available for the disciplinary authority, rather the same was based on extraneous material, namely, the past experience of the disciplinary authority in other cases. The Hon'ble Supreme Court in Jaswant vs. State of Punjab 1991 (1) SCC 362 (para 5) has stated that in order to apply the protection available under Proviso 2(b) of the said Article to the order of dismissal, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts, and is not the outcome of whim or caprice. It is an essential requirement that the decision of the disciplinary authority must have independent material to justify the dispensing with of the enquiry, envisaged under Article 311 (2).

5. In Union of India vs. Raddappa 1993 (2) UJSC 568 (para 5), it was held by the Hon'ble Supreme court that where it is evident that there was no material to hold the enquiry and was not reasonably practicable, the disciplinary action in such cases will be set aside even though the illegal order has been affirmed in appeal or revision. We are satisfied that the impugned order has been passed, based on no relevant material, germane to the case and as such the impugned order as well as the order in appeal affirming the former are both illegal.

6. The second important requirement in accordance with the various decisions of the Hon'ble

Supreme Court, to justify an order under Article 311 proviso 2(b), is that the authority empowered to dismiss, remove or reduce one's rank, must record his reasons in writing, for denying the liberty under Clause 2 before making an order of dismissal and the reasons thus recorded must, ex facie show that it was not reasonably practicable to hold a disciplinary enquiry and further the reason must not be vague, as in the present case. In view of the settled law in this regard, vide, Union of India vs. Tulsiram Patel AIR 1985 SC 1416 (para 133), Bakshi vs. Union of India AIR 1987 SC 2100 (para 8), Workmen vs. Hindustan Steel 1984 (Suppl.) SC 554 (para 4), and CSO vs. Singasan 1991 (1) SCC 729 (para 5), the impugned order dated 2.8.1996 and the appellate order dated 9.5.1997 are declared illegal and set aside. The The petitioner will be entitled to all consequential benefits. The respondents are also granted liberty to proceed against the petitioner in accordance with law. In these terms, this O.A. is allowed. No order as to costs.

(N. Sahu)
Member(A)

(Dr. Jose P. Verghese)
Vice-Chairma (J)

/as/